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**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
RIVERSIDE DIVISION**

In re:

RIVER CREST ESTATES, LLC,

Debtor.

Case No. 6:17-bk-15755-SC

Hon. Scott C. Clarkson

Chapter 11

**UNITED STATES TRUSTEE'S
OPPOSITION TO MOTION FOR
AUTHORITY TO EMPLOY THE
TUROCI FIRM AS GENERAL
BANKRUPTCY COUNSEL**

[Pursuant to LBR 9013-1(o), Request for a
hearing]¹

¹ Please take notice that Local Bankruptcy Rule 9013-1(o)(4), requires the movant to schedule and give not less than 14 days' notice of a hearing to the U.S. Trustee. The rule also states that if movant fails to obtain a hearing date, the court may deny the employment application without prejudice, without further notice or hearing.

**TO THE HONORABLE SCOTT C. CLARKSON, UNITED STATES BANKRUPTCY
COURT JUDGE, DEBTOR, AND ALL PARTIES-IN-INTEREST:**

Peter C. Anderson, the United States Trustee for the Central District of California,
Region 16 (“U.S. Trustee”), hereby submits his opposition to the *Motion of Debtor for Authority
to Employ The Turoci Firm as General Bankruptcy Counsel*, docket number 4
 (“Employment Application”).

I. ARGUMENT

**Applicant Seeks To Hold The Debtor Liable For Sanctions Awarded Against
Applicant.**

The Turoci Firm (“Applicant”) seeks approval of a Retainer Agreement attached to the
Employment Application. The Retainer Agreement states:

“This will confirm that [the debtor] has agreed to indemnify and hold the Firm and each of
its attorneys harmless from any claims, demands, actions or causes of action brought by
third parties that may arise and/or sanctions or fees that may be assessed in the court as a
result of the Firm’s representation, except for circumstances of negligence or improper
conduct by the Firm.

Retainer Agreement pg. 2. The Retainer Agreement does not define the types of sanctions the
Debtor must pay but sanctions are awarded based on a broad range of attorney misconduct. *See*
Fed. R. Bankr. P. 9011;

28 U.S.C. § 1927 (an attorney may be personally liable for unreasonable and vexatious delay of
proceedings); 28 U.S.C. § 1447(c) (sanctions for improper removal); *In re Deville*, 280 B.R. 483,
495 (B.A.P. 9th Cir. 2002) (bankruptcy court may use Section 105 to impose sanctions on an
attorney for bad faith conduct).

And that misconduct, if committed by Applicant, and resulting sanction, if any, is properly
the responsibility of Applicant, not the Debtor and not the estate.

Further, the indemnification and hold harmless clause appears to compel the Debtor, at the
expense of creditors, to pay Applicant for Applicant’s intentional and gross misconduct. Such
clauses have been held to be improper. *See In re Metricom, Inc.*, 275 B.R. 364, 369-70 (Bankr.
N.D. Cal. 2002) (citing cases rejecting indemnity agreements for estate professionals).

1 Finally, the indemnification and hold harmless clause may violate the California Rules of
2 Professional Responsibility. In employment and compensation matters, bankruptcy courts often
3 seek guidance from a state's ethical rules. *See e.g., In re C & P Transport*, 94 B.R. 682, 691
4 (Bankr. E.D. Cal. 1988) (reviewing the California Rules of Professional Responsibility for
5 assistance in determining the appropriate treatment of a retainer).

6 Rule 3-400 expressly states:

7
8 A member shall not:

9 (A) Contract with a client prospectively limiting the member's liability to the
10 client for the member's professional malpractice; or

11 (B) Settle a claim or potential claim for the member's liability to the client for
12 the member's professional malpractice, unless the client is informed in
13 writing that the client may seek the advice of an independent lawyer of the
14 client's choice regarding the settlement and is given a reasonable opportunity
15 to seek that advice.

14 Applicant bears the burden of demonstrating whether the indemnification and hold harmless
15 provision complies with California's ethics rules as well as the Bankruptcy Code.

16 **II. CONCLUSION**

17 The Court should deny the Employment Application until Applicant removes the indemnity
18 and hold harmless provision in the Retainer Agreement.

19
20 DATED: July 25, 2017

PETER C. ANDERSON
UNITED STATES TRUSTEE

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23 By: /s/ Everett L. Green
24 Everett L. Green
25 Trial Attorney
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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
Office of the U.S. Trustee, 3801 University Ave., Suite 300, Riverside, CA 92501

A true and correct copy of the foregoing document entitled (*specify*): _____
Objection to Employment Application

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) 07/25/2017, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

See NEF service list

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) 07/25/2017, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Debtor, River Crest Development, LLC, 44615 Sandia Creek Dr., Temecula, CA 92590

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) 07/25/2017, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Hon. Scott C. Clarkson, 411 W. Fourth St., Ste. 5130, Santa Ana, CA 92701-4593 (overnight mail)

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

07/25/2017 Everett L. Green /s/ Everett L. Green
Date *Printed Name* *Signature*

Mailing Information for Case 6:17-bk-15755-SC

Electronic Mail Notice List

The following is the list of **parties** who are currently on the list to receive email notice/service for this case.

- **Everett L Green** everett.l.green@usdoj.gov
- **Todd L Turoci** mail@theturocifirm.com
- **United States Trustee (RS)** ustpreion16.rs.ecf@usdoj.gov

Manual Notice List

The following is the list of **parties** who are **not** on the list to receive email notice/service for this case (who therefore require manual noticing/service). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)

[Creditor List](#)

Click the link above to produce a complete list of **creditors** only.

[List of Creditors](#)

Click on the link above to produce a list of **all** creditors and **all** parties in the case. User may sort in columns or raw data format.